

**2009 ABMEI NEGOTIATIONS
CITY INITIAL PACKAGE PROPOSAL***

PERIOD OF MEMORANDUM OF AGREEMENT – ARTICLE 1

Term: One (1) Year

REDUCED WORK WEEK

The Reduced Work Week side letter with ABMEI will be discontinued the first full payperiod after ratification by the ABMEI membership and approval by the City Council. As a result, all employees represented by ABMEI will return to a 40 hour work week effective the first regular work day thereafter.

PAY

Effective the first full payperiod after ratification by the ABMEI membership and approval by the City Council, all classifications represented by ABMEI will have each step reduced by 5%. This will result in the top and bottom step of all classifications represented by ABMEI being 5% lower.

HEALTH INSURANCE COST SHARING

See Attached (City Proposal #10)

HEALTH INSURANCE DUAL COVERAGE

See Attached (City Proposal #20)

HEALTH INSURANCE- HEALTH IN LIEU

See Attached (City Proposal #12)

RELEASE TIME

See Attached (City Proposal #3)

PROBATIONARY PERIODS

See Attached (City Proposal #2)

DISABILITY LEAVE SUPPLEMENT

See Attached (City Proposal #19)

FREEZING STEP INCREASES

See Attached (City Proposal #21)

**2009 ABMEI NEGOTIATIONS
CITY INITIAL PACKAGE PROPOSAL***

RETIREMENT COST MITIGATION

See Attached (City Proposal #22)

OVERTIME- 40 HOURS

See Attached (City Proposal #5)

OFF HOURS INSPECTIONS

See Attached (City Proposal #4)

SICK LEAVE PAYOUT

See Attached (City Proposal #13)

ALL SIDE LETTERS EXPIRE

ALL TENTATIVE AGREEMENTS

** This proposal is submitted in an attempt to reach a settlement. In the event the proposal is not accepted, the City reserves the right to modify, amend and/or add proposals, including, but not limited to:*

- Revise step structure and modify movement within steps
- Compensatory Time Clarification
- Retiree Pension Benefits
- Calculation and Eligibility of Overtime- Paid Time Off
- Healthcare- Modifications to HMO Plan Design

CITY PROPOSAL #10- HEALTHCARE COST SHARING FORMULA

5.3 Health Insurance

The City will provide health coverage for eligible full-time employees and their dependents in accordance with one of the available plans. The City will pay ninety percent (90%) of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage, and the employee will pay ten percent (10%) of the premium for the lowest priced plan for employee or for employee and dependent coverage, up to a maximum of one hundred dollars (\$100) per month. If the employee's 10% contribution for the lowest priced plan exceeds one hundred dollars (\$100) per month, the City shall pay the difference. If an employee selects a plan other than the lowest priced plan, the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan for employee or for employee and dependent coverage.

~~Effective at the beginning of pay period one (1) of payroll calendar year 2008, t~~The City will pay ninety percent (90%) of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage, and the employee will pay ten percent (10%) of the premium for the lowest priced plan for employee or for employee and dependent coverage. If an employee selects a plan other than the lowest priced plan, the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan for employee or for employee and dependent coverage.

Effective at the beginning of pay period one (1) of payroll calendar year 2010, the City will pay eighty percent (80%) of the full premium cost of the lowest cost plan for employee or for employee and dependent coverage, and the employee will pay twenty percent (20%) of the premium for the lowest priced plan for employee or for employee and dependent coverage. If an employee selects a plan other than the lowest priced plan, the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan for employee or for employee and dependent coverage.

CITY PROPOSAL #20- HEALTHCARE DUAL COVERAGE

5.3 Health Insurance

5.3.1 An employee may not be simultaneously covered by City-provided medical benefits as a City employee, and as a dependent of another City employee.

5.4 Dental Insurance

5.4.1 An employee may not be simultaneously covered by City-provided dental benefits as a City employee, and as a dependent of another City employee.

CITY PROPOSAL #12- HEALTHCARE- HEALTH IN LIEU

5.5 Payment-in-Lieu of Health and Dental Insurance

5.5.1 The purpose of the payment-in-lieu of health and/or dental insurance program is to allow employees who have double health and/or dental insurance coverage to drop the City's insurance and receive a payment-in-lieu.

5.5.2 Employees who qualify for and participate in the payment-in-lieu of health and/or dental insurance program will receive 50% of the City's contribution toward their health and/or dental insurance at the lowest cost single or family plan if the employee is eligible for family coverage. The City will retain the remaining 50% of that contribution the following per payperiod:

	Health In-Lieu	Dental In-Lieu
If eligible for family coverage:	221.84	19.95
If NOT eligible for family coverage:	89.09	19.95

5.5.3 An employee who is already receiving other City provided medical benefits is not eligible for payment-in-lieu.

5.5.3 The payment-in-lieu of health and/or dental insurance program is available to full-time employees who are not on a reduced workweek or unpaid leave and have alternate group health and/or dental coverage. To qualify, an employee must provide proof of alternate group coverage to Human Resources. Alternate coverage must be acceptable by the City.

5.5.4 Enrollment in the payment-in-lieu of health and/or dental insurance program can only be done during the first 30 days of employment, during the annual open enrollment period, or within 30 days of a qualifying event (defined in the Human Resources Benefits Handbook as a change in marital, dependent or work status of the employee or the employee's spouse) occurring anytime during the year. Employees who miss the 30-day time limit after a qualifying event must wait until the next open enrollment period to enroll in the payment-in-lieu of insurance program. Enrollment in the payment-in-lieu of insurance program may be canceled by the employee only during the annual open enrollment period unless the employee loses alternate group coverage. Enrollment or cancellation during the open enrollment period will become effective the first pay period of the following calendar year.

5.5.5 Payments for the in-lieu insurance program will be discontinued if an employee becomes ineligible for the program. An employee's ineligible status would include but not be limited to the following situations: employment status changes from full to part time, employee is on an unpaid leave of absence, employee is on a reduced work week, or employee loses or does not have alternate insurance coverage. An employee whose in-lieu payments are discontinued may enroll, if eligible, in a health and/or dental plan during the next annual open enrollment period.

5.5.6 If an employee loses alternate coverage, the employee may enroll in a City health and/or dental plan outside of the open enrollment period. To be eligible, the employee must provide verification that alternate coverage has been lost.

- 5.5.6.1 Health Insurance. To enroll in a City health insurance plan following loss of alternate coverage, the employee must pay all unpaid premiums (City and employee contributions) and refund any excess in-lieu payments required to make the coverage effective on the date when alternate coverage ceased. Re-enrollment in the plan shall be in accordance with the carriers' enrollment procedures.
- 5.5.6.2 Dental Insurance. Enrollment in a City dental insurance plan following loss of alternate coverage will become effective the first of the month following payment of two dental premiums through the City's payroll process. Re-enrollment in the dental insurance plan shall not be retroactive.

CITY PROPOSAL #3- RELEASE TIME

Addition of a new article, Article 22, Release Time. All subsequent articles shall be renumbered.

ARTICLE 22 RELEASE TIME

- 22.1 Release time from regular City duties shall be provided to designated Union representatives in accordance with the following provisions.
- 22.2 The Union President or designee shall be granted release time from regular City duties to attend the following meetings:
- To attend Civil Service Commission meetings when matters affecting the Union are considered.
 - To attend City Council meetings when matters affecting the Union are considered.
 - To attend Federated Retirement Board meetings.
 - To attend grievance meetings when used to facilitate settling of grievances.
 - To attend Benefit Review Forum meetings.
 - To attend City Labor Alliance meetings held with the City Manager or Employee Relations.
 - To attend meetings scheduled by Administration when attendance is requested.
 - To attend other meetings and trainings approved by the Employee Relations Director, or designee.
- 22.3 Authorization For Release Time. If the designated Union representative finds it necessary to leave assigned duties to investigate or process a grievance, or attend a meeting as defined in this Article, the representative must inform the immediate supervisor of the general nature for the release time and receive authorization from the immediate supervisor prior to leaving assigned duties. Upon return to assigned duties, the representative must report back to the immediate supervisor.
- 22.4 Release Time Restrictions. Release time shall not be provided for lobbying or political purposes. Release time is provided only to the extent that any employee is required or authorized to attend meetings, trainings or other authorized events during said employee's normal work schedule/hours. Employees are not entitled to receive over-time or regular compensation for attendance of meetings, trainings or other authorized events occurring outside of their normal work schedule/hours.

CITY PROPOSAL #2- PROBATIONARY PERIODS

ARTICLE 25 PROBATIONARY PERIODS

25.1 Probationary periods shall not be less than six (6) or twelve (12) months of actual service as determined by the Civil Service Commission. Actual service shall mean regular hours worked, paid holidays and up to 80 hours of other cumulative or consecutive paid or unpaid absences.

25.2 The City may at its discretion extend up to a maximum of ~~three~~ six (36) months, the probationary period of an employee ~~appointed to a supervising position in this unit~~. The employee will be notified in writing of the length and reason of the extension.

CITY PROPOSAL #19- DISABILITY LEAVE SUPPLEMENT

ARTICLE 19 DISABILITY LEAVE

- 19.1 Disability Leave. Disability Leave Supplement (DLS) is the benefit provided pursuant to this Article, which, when added to Workers' Compensation Temporary Disability (WCTD) results in providing employees 8566% of their regular base salary.
- 19.2 Eligibility for Disability Leave Supplement. A full-time employee required to be absent from work due to a job-related injury or industrial illness who receives WCTD payments pursuant to Division 1 or Division 4 of the California Labor Code is eligible for DLS, excluding ineligible causes listed in section 19.4. In the event an employee is not eligible for WCTD payments because of the statutory waiting period, DLS shall not be paid for such a waiting period. The employee may use sick leave to cover the waiting period.
- 19.2.1 After the initial three day waiting period has been met, and the employee otherwise qualifies for DLS, the employee may utilize DLS for absences required for medical visits related to the injury after his/her return to work if he/she is unable to schedule such visits on non-work hours. DLS for such intermittent absences is subject to authorization by the Workers' Compensation Section. In no event may DLS exceed the limit specified in 19.6.
- 19.3 Eligibility for Disability Leave Supplement Linked to Temporary Disability. If the Worker's Compensation Appeals Board of the State of California or any judicial court should determine that the employee is not entitled to Temporary Disability (WCTD) compensation, the employee shall not be entitled to Disability Leave Supplement (DLS) benefits. Under such circumstances, any DLS moneys paid to the employee by the City must be returned to the City within one year.
- 19.4 Ineligible Causes for Disability Leave. An employee shall not be eligible for disability leave, and shall not receive DLS if the injury or illness that causes the absence results from an act of gross negligence of such employee and/or any work voluntarily undertaken by employee from which he has been prohibited from engaging in as determined by a City physician, prior to the date of injury.
- 19.5 Ineligibility if Offer and Decline of Modified Duty. ~~DLS shall not be provided~~An employee shall be voluntarily separated from City service if the City offers the employee employment at identical or similar salary, within the employee's medical limitations, and the employee refuses or fails to accept duty for which the employee is physically qualified.
- 19.6 Maximum Term of Disability Leave Supplement. The employee will receive DLS benefits equal to the amount of money which, when added to the WCTD equals 8566% of what the employee would have earned at the position from which the employee is disabled for one of the following time periods, whichever is shortest:
1. The time the employee is medically required to be absent due to a work-related injury or illness, after the required 3-day waiting period.
 2. The period of time WCTD is payable to the employee under the Workers' Compensation provisions of Division 1 or Division 4 of the Labor Code of the State of California.

3. ~~Nine Six (96)~~ calendar months (~~274 days or 1560~~ 1040 hours if not continually absent) following the date of injury.

19.6.1 Time Limit for DLS Eligibility. After ~~1560~~ 1040 hours of DLS, the employee is entitled to no additional compensation for the injury or illness. No employee shall be eligible for DLS 5 years after the date of the onset of the injury or illness for which the employee is claiming DLS.

- 19.7 Disability Leave Supplement is in Lieu of Regular Compensation. Employees who receive WCTD and DLS compensation do not receive their regular salary. DLS as described in this Article is in lieu of regular compensation.
- 19.8 Requirement of Evidence Proving Temporary Disability. The Director of Human Resources, or designee, is responsible for determining eligibility for DLS. In making this determination, the Director may require the employee to provide proof of injury or illness, proof that the injury or illness will last, and proof of other relevant matters as determined by the Director, or designee. The Director, or designee, may require the employee to submit to a medical examination by a physician selected by the City.
- 19.9 Termination of Disability Leave. An employee who is unable to return to full time regular duty following the expiration of any and all leave provided in this Article and the integration of Sick Leave as provided in Article 18.1.3.1, and of accrued vacation, and compensatory time off, with Workers' Compensation may be considered to have separated from City service.
- 19.9.1 An employee who exhausts all Disability Leave shall be notified that they are subject to the above provision upon expiration of all remaining paid leave.

CITY PROPOSAL #21- FREEZING STEP AND MERIT INCREASES

Effective the first full payperiod following ratification by the ABMEI membership and approval by the City Council, all ABMEI represented employees will have step and merit increases frozen for 26 payperiods. After 26 payperiods, employees represented by ABMEI will become eligible for step increases upon completion of an additional 2080 seniority hours after the date they did not receive a step increase for which they were previously eligible.

CITY PROPOSAL #22- RETIREMENT COST MITIGATION

ARTICLE 9 FULL UNDERSTANDING, MODIFICATION AND WAIVER

- 9.1 This Agreement sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any and all prior or existing Memoranda of Understanding, understandings and agreements, whether formal or informal, are hereby superseded and terminated in their entirety.
- 9.2 Existing benefits provided by ordinance or resolution of the City Council or as provided in the San Jose Municipal Code and which are referenced in the Agreement shall be provided in accordance with the terms of the Agreement.
- 9.3 It is the intent of the parties that ordinances, resolutions, rules and regulations enacted pursuant to this Memorandum of Agreement be administered and observed in good faith.
- 9.4 Although nothing in this Agreement shall preclude the parties from mutually agreeing to meet and confer on any subject within the scope of representation during the term of this Agreement, it is understood and agreed that neither party may require the other party to meet and confer on any subject matter covered herein or with respect to any other matter within the scope of representation during the term of this Agreement.

~~9.5 Notwithstanding the provisions of Article 9.4 and Article 24, the City may notify the Organization in writing once during the term of this 2007 – 2009 Agreement of its desire to reopen negotiations regarding retiree healthcare benefits. Upon such notice being given, the duly authorized representatives of the parties shall meet and confer in good faith in an effort to reach a mutual agreement with respect to retiree healthcare benefits. If no agreement is reached, the parties will follow the impasse procedures set forth in the City of San Jose's Employer-Employee Relations Resolution (#39367) and the Meyers-Millas-Brown Act. The parties understand that this means that, notwithstanding any other provision of this agreement, the City will have the right to unilaterally implement in the event that no agreement is reached at the conclusion of negotiations and mandatory impasse procedures. The parties also agree that, after declaration of impasse with respect to negotiations over a modification of retiree healthcare benefits, if the City provides notification of implementation, the Organization has the right to engage in a strike, or such other protected concerted activities on the employees' own time provided such other protected concerted activities do not impede the performance of the employees' assigned duties. Protected concerted activities shall not include partial strikes (such as refusing to work overtime, engaging in a slowdown or accepting some work tasks and refusing to perform others), intermittent strikes and sit-down strikes.~~

9.5 Retirement Cost Mitigation.

9.5.1 Notwithstanding any other provision of this Agreement, the parties agree to commence meeting and conferring between January 1, 2011, and January 19, 2011, on retiree healthcare benefits for future employees, a medical reimbursement program for future retirees and pension benefits for current and future employees.

9.5.2 The parties intend to engage in the foregoing negotiations in a coalition bargaining process with all other interested represented bargaining units, if any. However, negotiations between the City and Employee Organization shall commence no later than January 19, 2011, with or without participation of any other bargaining unit. The City and Employee Organization shall negotiate in good faith in an effort to reach a mutual agreement.

9.5.3 If no agreement is reached, the parties will follow the impasse procedures set forth in the City of San Jose's Employer-Employee Relations Resolution (#39367) and the Meyers-Milias-Brown Act. The parties understand that this means that, notwithstanding any other provision of this agreement, the City will have the right to unilaterally implement in the event that no agreement is reached at the conclusion of negotiations and mandatory impasse procedures. The parties also agree that, after declaration of impasse with respect to negotiations over a modification of retiree healthcare and pension benefits, if the City provides notification of implementation, the Organization has the right to engage in a strike, or such other protected concerted activities on the employees' own time provided such other protected concerted activities do not impede the performance of the employees' assigned duties. Protected concerted activities shall not include partial strikes (such as refusing to work overtime, engaging in a slowdown or accepting some work tasks and refusing to perform others), intermittent strikes and sit-down strikes. The City agrees that a unilateral implementation of retiree healthcare and/or pension benefits shall not be effective before July 1, 2011.

ARTICLE 25 RETIREE HEALTHCARE FUNDING

(Current Article 25 and subsequent articles to be re-numbered)

- 25.1 The City and the Employee Organization agree to transition from the current partial pre-funding of retiree medical and dental healthcare benefits (referred to as the "policy method") to pre-funding of the full Annual Required Contribution (ARC) for the retiree healthcare plan ("Plan"). The transition shall be accomplished by phasing into fully funding the ARC over a period of five (5) years beginning June 28, 2009. The Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization). Amortization of changes in the unfunded retiree healthcare liability other than the initial retiree healthcare liability (e.g. gains, losses, changes in actuarial assumptions, etc.) shall be determined by the Plan's actuary. The City and Plan members (active employees) shall contribute to funding the ARC in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San Jose Municipal Code. Specifically, contributions for retiree medical benefits shall be made by the City and members in the ratio of one-to-one. Contributions for retiree dental benefits shall be made by the City and members in the ratio of eight-to-three. When determining the contribution rates for the Plan, the Plan actuary shall continue to use the Entry Age Normal (EAN) actuarial cost method and a discount rate consistent with the pre-funding policy for the Plan as outlined in this Article.
- 25.2 The City and the Employee Organization further agree that the Municipal Code and/or applicable plan documents shall be amended in accordance with the above agreement and that the Employee Organization will support such amendments.
- 25.3 It is understood that in reaching this agreement, the parties have been informed by cost estimates prepared by the Federated City Employees' Retirement System Board's actuary and that the actual contribution rates to reach full pre-funding of retiree healthcare will differ. The phase-in to the ARC shall be divided into five steps (using a straight line method), each to be effective on the first pay period of the City's fiscal year in each succeeding year. The first increment of the phase-in shall be effective on June 28, 2009. It is understood that because of changes resulting from future actuarial valuations, the amount of each increase may vary upward or downward. The City and Employee Organization agree that the Plan member cash contribution rate shall not have an incremental increase of more than .75% of pensionable pay in each fiscal year and the City cash contribution rate shall not have an incremental increase of more than .75% of pensionable pay in each fiscal year. For example, if the members' contribution rate is 4% of pensionable pay, the subsequent fiscal year's contribution rate for

2009 CITY OF SAN JOSE – ABMEI NEGOTIATIONS

retiree healthcare cannot exceed 4.75% of pensionable pay. Notwithstanding the limitations on the incremental increases, by the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San Jose Municipal Code.

25.4 The City will establish a qualified trust ("Trust") before June 27, 2010. Until such time as a Trust is established, the City and employee contributions under this agreement shall be made into the existing Medical Benefits Account for as long the contributions can be made into the Medical Benefits Account in accordance with IRS limitations. If the Trust is not established prior to reaching the IRS limitation, the parties agree to meet and discuss alternative funding vehicles.

25.5 It is the objective of the parties that the Trust created pursuant to this agreement shall become the sole funding vehicle for Federated retiree healthcare benefits, subject to any legal restrictions under the current plan, or other applicable law.

CITY PROPOSAL #5- CALCULATION AND ELIGIBILITY FOR OVERTIME

- 6.6 An employee authorized or required to work overtime who works in excess of eight (8) hours per day, or ten (10) hours per day if assigned to a work schedule of four (4) ten (10) hour work days, or in excess of forty (40) hours per work week, shall be compensated at the rate of time and one-half (1-1/2) the employee's hourly rate, except when such excess hours result from a change in such employee's work week or shift or from the requirement that such employee fulfill his/her work week requirement.
- 6.6.1 Notwithstanding 6.6 above, any employee who works in excess of twelve consecutive hours shall be compensated at the rate of two (2) times the employee's hourly rate for all hours worked in excess of twelve (12) consecutive hours.
- 6.6.2 For overtime work, volunteers will be asked for first, whenever possible.

CITY PROPOSAL #4- SCHEDULED OFF-HOURS INSPECTIONS

5.13 Scheduled Off-Hours Inspections

An employee who is scheduled to perform one or more inspection(s) outside of, and not contiguous with, his/her regularly scheduled shift, shall be compensated for performing such inspection(s) at the rate of ~~four~~ two (42) hours or for the time actually worked, to the nearest ~~half-hour~~ fifteen minutes, whichever is greater. Such compensation shall be at the appropriate rate.

CITY PROPOSAL #13- SICK LEAVE PAYOUT

18.2 Sick leave payoff shall be given to each full-time employee at the time of retirement or death under one of the following conditions:

18.2.1 Federated Retirement Plan:

The employee is:

18.2.1.1 A member of the Federated Retirement Plan, and

18.2.1.2 Retired under the provisions cited in the plan, and

18.2.1.3 Credited with at least fifteen (15) years of service in this retirement plan, or

18.2.1.4 Credited with at least ten (10) years of service prior to a disability retirement.

~~18.2.2 Terminated Employee with Vesting Rights~~

~~The employee has:~~

~~18.2.2.1 Terminated service with the City, and~~

~~18.2.2.2 Retained vesting rights in a retirement system according to provisions in the SJMC, and~~

~~18.2.2.3 Following such termination, qualifies for retirement and retires under the provisions cited in the code and~~

~~18.2.2.4 Has at the time of retirement credit for at least fifteen (15) years of service in the applicable retirement plan.~~

18.2.3 Death During Service

The estate of any full-time employee who dies while in City service and prior to retirement, even though the employee is not credited with at least fifteen (15) years of service in any applicable retirement plan.

~~18.2.4 Death of Terminated Employee~~

~~The estate of any full-time employee who:~~

~~18.2.4.1 Had terminated service with the City but had retained vesting rights in a retirement system according to provisions in the SJMC, and~~

~~18.2.4.2 Dies prior to becoming eligible for retirement allowances as cited under provisions of the SJMC, and~~

~~18.2.4.3 Has at the time of death credit for at least fifteen (15) years of service in the~~

~~applicable retirement plan.~~

18.3 Payout shall be determined as follows:

18.3.1 If an eligible full-time employee, as defined in subsection 18.2 above, at the time of their retirement or death has earned, unused sick leave hours, the employee shall be paid the equivalent of a specified percent of their hourly rate of pay at the time of retirement, termination or death, whichever comes first, multiplied by the total number of the employee's accumulated and unused hours of sick leave as of the date of the employee's retirement or death.

18.3.2 Less than 400 hours: Hours accumulated x 50% of final hourly rate

400 - ~~799~~ 1200 hours: Hours accumulated x 60% of final hourly rate

~~800 - 1200~~ hours: Hours accumulated x 75% of final hourly rate

18.4 Employees are only eligible for one sick leave payoff while employed by the City of San Jose, including breaks in employment.

18.5 Employees hired by the City on or after July 1, 2010, shall not be eligible for a sick leave payoff benefit.